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ABSTRACT

Presented are the amendments to Part 200 of the regulations of New York's Commissioner of Education, adopted by the Board of Regents between February 27, 1987 and March 1, 1989. The amendments deal with: (1) the provision of consultant teacher services; (2) participation in Individualized Education Program planning conferences; (3) special education space requirements plans, and the roles of the boards of cooperative educational services and the commissioner in developing and approving the plans; (4) notification to parents and students of the end of entitlement to receive tuition-free educational services; (5) procedures for obtaining adult services; (6) due process hearings; (7) appointment of blind, deaf, and severely physically handicapped pupils to state-operated and state-supported schools; (8) notice of closing of approved private schools; and (9) state assistance for transportation of pupils with handicapping conditions. (JDD)

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Amendments to Part 200

of the

Regulations of the Commissioner of Education

Adopted by the Board of Regents

between

February 27, 1987 and March 1, 1989

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AMENDMENTS TO REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Sections 207, 3602(19) and 4401(2) of the Education Law, and Sections 32 and 51 of Chapter 53 of the Laws of 1988.

1. Section 200.1 of the Regulations of the Commissioner of Education is amended, effective September 16, 1988, by the addition of a new subdivision (mm), to read as follows:

(mm) Consultant teacher services means direct and/or indirect services, as defined in this subdivision, provided to a pupil with a handicapping condition who attends a regular education program on a full-time basis and/or to such pupil's regular education teachers.

(1) Direct consultant teacher services means specially designed individualized or group instruction provided by a certified special education teacher to a pupil with a handicapping condition to aid such pupil to benefit from the pupil's regular education program.

(2) Indirect consultant teacher services means consultation provided by a certified special education teacher to regular education teachers to assist them in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a pupil with a handicapping condition who attends their classes.

2. Subparagraph (iv) of paragraph (2) of subdivision (c) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective September 16, 1988, as follows:

(iv) indicate the recommended program from the options set forth in section 200.6 of this Part, the class size, if appropriate, and the extent to which the pupil will participate in regular education programs, including physical education or adaptive physical education and, when appropriate, occupational education, and, if appropriate, indicate the areas of the regular education program in which the pupil will receive consultant teacher services;

3. Paragraph (2) of subdivision (c) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective September 16, 1988, as follows:

(2) Participants at the planning conference shall include the pupil's teacher, the pupil whenever appropriate, the parent or legal guardian and other individuals at the discretion of the parent or agency. The agency shall ensure that the parent understands the proceedings at the meeting and shall arrange for the presence of an interpreter, if necessary. If the pupil is not in a district-operated program, a representative of the school district responsible for the development of phase I of the IEP who is qualified to provide or supervise the provision of special education shall be given the opportunity to attend. A representative of the agency, other than the pupil's teacher, who is qualified to provide or supervise the provision of special education shall also be given the opportunity to attend the initial planning conference and shall attend each subsequent planning conference for such pupil. A member of the evaluation team, or a person who is knowledgeable about the evaluation procedures used with the pupil, shall also be given the opportunity to attend the planning conference for a pupil who is being placed for the first time.
When consultant teacher services are specified in a pupil's IEP, the regular education teachers of the pupil for whom the service will be provided shall either be given the opportunity to participate in such planning conferences for the purpose of discussing the objectives, methods and schedules for such services, or shall be given an opportunity to participate through submission of written materials or discussions with the consultant teacher who will provide such services.

4. Section 200.6 of the Regulations of the Commissioner of Education is amended, effective September 16, 1988, by the addition of a new subdivision (k), to read as follows:

(k) Consultant teacher services. Consultant teacher services shall be for the purpose of providing direct and/or indirect services to pupils with handicapping conditions enrolled full-time in a regular program, including occupational education. Such services shall be recommended by the committee on special education to meet specific needs of such pupils and shall be included in the student's individualized education program (IEP).

Consultant teacher services shall be provided in accordance with the following provisions:

(1) The total number of pupils with handicapping conditions assigned to a consultant teacher shall not exceed 20.

(2) Each pupil with a handicapping condition requiring consultant teacher services shall receive direct and/or indirect services consistent with the pupil's individualized education program (IEP) for a minimum of two hours each week.

(3) Upon application and documented educational justification to the commissioner, approval may be granted for a variance for the number of pupils with handicapping conditions assigned to a consultant teacher as specified in paragraph (1) of this subdivision.

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Sections 207, 1950 and 4403 of the Education Law and Chapter 552 of the Laws of 1988.

Section 200.2 of the Regulations of the Commissioner of Education is amended, effective February 8, 1989 by the addition of a new subdivision (g) to read as follows:

(g) Responsibility of boards of cooperative educational services for special education space requirements plans. The district superintendent of schools of each board of cooperative educational services (BOCES) shall submit a special education space requirements plan to the commissioner no later than February 1, 1989 and by February first of every fifth year thereafter in accordance with Education Law, section 1950(17). The purpose of such plan shall be to determine the need for additional facilities space for all special education programs in the geographic area served by the BOCES, including programs provided by the BOCES, component school districts of the BOCES, and those non-component public school districts, approved private schools for pupils with handicapping conditions, and state-supported schools, which are located within the geographic boundaries of the supervisory district.

(1) Development of plan. Such plan shall be developed by the district superintendent who shall appoint a planning committee to assist in the development of the plan. The planning committee shall also ensure that an effective process for obtaining public comment during the planning process is initiated, and shall provide a description of such process and a summary of public commentary received to the district superintendent for submission to the commissioner with the plan. Such planning committee shall include but need not be limited to:

(i) the district superintendent of schools responsible for developing the plan;

(ii) the superintendents of schools, or their designees, of at least one third, but not less than five, of the public school districts in the geographic area served by the BOCES;

(iii) a representative of at least one approved private school located within the geographic area served by the BOCES, if any are so located; and

(iv) one parent of a student with a handicapping condition who is educated in a special education program operated by the BOCES and one parent of a student with a handicapping condition who is educated in a special education program operated by a public school district located within the geographic area served by the BOCES.

(2) Contents of plan. The special education space requirements plan shall be in a form prescribed by the commissioner and shall include, but need not be limited to, the following:

(i) a description of the space available for special education programs and services within the facilities of local school districts, the BOCES, and approved private schools located within the geographic area served by the BOCES;

(ii) a description of the current and future special education program and service space needed to serve the students attending school within the geographic area served by the BOCES;

(iii) a plan to allocate, renovate or construct space for special education programs and services within the geographic area served by the BOCES which is sufficient and appropriate to meet such current and future special education space needs, and which:

(a) ensures that children with handicapping conditions, including children in public and approved private schools and other approved facilities, are educated in age--appropriate settings and to the maximum extent appropriate with children who are not handicapped, and

(b) ensures that separate schooling or other removal of children with handicapping conditions from the regular education environment occurs only when the nature or severity of their handicapping conditions is such that education in public school settings with supplementary aids and services cannot be achieved satisfactorily;

(iv) a description of procedures to ensure the stability and continuity of program placement for children with handicapping conditions, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating children with handicapping conditions.

(3) The district superintendent shall submit the special education space requirements plan to the commissioner and shall forward a copy of such plan to the board of education of each public school district within the geographic area served by the BOCES where it shall be available for public inspection. In addition, the district superintendent shall forward a copy of such plan to each approved private school located within the geographic area served by the BOCES.

(4) Approval of plan. The commissioner will review each special education space requirements plan and will notify the appropriate district superintendent of its approval or disapproval. In the event that the plan does not receive approval from the commissioner:

(i) the commissioner will notify the district superintendent in writing of the reasons for denial of approval;

(ii) the district superintendent shall reply to the commissioner's notification within 45 days of the date of notice, indicating the specific changes made in the plan to correct identified deficiencies; and

(iii) if, after revision, the plan does not receive approval, the commissioner shall convene a meeting of the planning committee which developed the plan for the purpose of resolving outstanding issues, according to procedures and timelines set at that time by the commissioner.

(5) Amendments to plan. When, due to changes in the availability of appropriate facility space, a public school district or a BOCES intends to relocate a special class program from a regular school building to a separate special education facility or, for a special class operated by a BOCES, from one school district to another, and such relocation is not consistent with an approved special education space requirements plan:

(i) the district superintendent shall submit to the commissioner for approval an amendment to the special education space requirements plan no later than 90 days prior to each relocation of a special education program operated by the BOCES that would result in moving such programs from one school district to another or from a regular school building to a separate special education facility;

(ii) in the event that a board of education within the geographic area served by the BOCES proposes to relocate a school district special education program from a regular school building to a separate special education facility, such board of education shall notify the appropriate district superintendent of schools within timelines to be established by the district superintendent. The district superintendent shall then submit to the commissioner for approval an amendment to the special education space requirements plan no later than 90 days after receipt of such notice by the district superintendent.

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Sections 207, 4402 and 4403 of the Education Law.

Subdivisions (h), (i), and (j) of section 200.4 of the Regulations of the Commissioner of Education are repealed and new subdivision (h) of section 200.4 is added, effective February 3, 1989, to read as follows:

(h) Pursuant to Education Law, section 4402(1)(b)(5), the committee on special education or, in the case of a state-operated school, the multidisciplinary team, shall provide written notice to the parents or guardian of each student specified in subparagraphs (i) and (ii) of paragraph (1) of this subdivision and, if such student is 18 years of age or older, to the student, of the date upon which the student will no longer be entitled to receive tuition-free educational services by reason of receipt of a high school diploma or in accordance with Education Law, Section 4402(5), whichever is earlier.

(1) The notice shall be provided:

(i) by November 1st of the school year within which a student who is placed in an in-state or out-of-state residential school program in accordance with article 81 or article 89 of the Education Law will attain the age of 18 or, if such student is over the age of 18 when placed in such a residential program, at the time of placement, and

(ii) upon the first annual review after attaining the age of 15 for a student who is receiving nonresidential special services or programs in accordance with article 89 of the Education Law, or is receiving special services or programs in a day program at the Human Resources School, and who:

(a) is receiving such special services or programs 100 percent of the school day,

(b) is receiving individualized attention or intervention because of intensive management needs or a severe handicapping condition, and

(c) may need adult services as determined by the committee on special education or multidisciplinary team following appropriate review of the student's physical, mental, emotional and educational history.

(2) The notice, which shall be in a form prescribed by the Commissioner of Education, shall:

(i) describe in detail the opportunity and procedure for obtaining from a State agency specified in Education Law, section 4402(1)(b)(5)(a), at least 6 months before such student attains the age of 21, a determination of the student's need for adult services and a recommendation of all appropriate programs operated, approved, authorized, or licensed by that agency which may be available when the student becomes ineligible for tuition-free educational services;

(ii) provide that:

(a) (1) within 20 days of receipt of notice by a student 18 years of age or older, the committee on special education or multidisciplinary

team shall give the student the opportunity to consent or withhold consent to the release of relevant information as such term is defined in section 4402 (1)(b)(5)(a) of the Education Law; or

(2) within 20 days of receipt of notice by the parent or guardian of a student less than 18 years of age, the committee on special education or multidisciplinary team shall give the parent or guardian the opportunity to consent or withhold consent to the release of relevant information; or

(3) within 30 days after receipt of notice by a student over the age of 18 years, if such student exercises neither option set forth in subclause (1) of this clause and a designated staff member of the staff of the educational facility has reason to believe that the student may not be able to understand the purpose of the form, the committee on special education or the multidisciplinary team shall give the parent or guardian the opportunity to consent or withhold consent to the release of relevant information;

(b) the committee on special education or multidisciplinary team, upon receipt of consent, shall forward the student's name and other relevant information in a report to the Commissioner of Mental Health, Commissioner of Mental Retardation and Developmental Disabilities, Commissioner of Social Services or Commissioner of Education or their designees. The committee on special education or multidisciplinary team shall determine which commissioner shall receive the report; and

(c) such information shall be released to the Council on Children and Families if there is a dispute as to the appropriate agency;

(iii) state that:

(a) within 10 days of the date of receipt of consent, the committee on special education or multidisciplinary team shall forward the report, including all relevant information in its possession, to the commissioner of the appropriate agency, or such commissioner's designee; and

(b) in the event that the committee on special education or multidisciplinary team is notified by the commissioner of the State agency receiving the report that such agency is not responsible for determining the need for and recommending adult services for the student, the committee on special education or multidisciplinary team shall forward the report to another of the commissioners identified in clause (b) of subparagraph (ii) of this paragraph, or, if there exists a dispute as to which agency may be responsible, shall forward the report to the Council on Children and Families for resolution of the dispute; and

(iv) state that in the event that consent is withheld, the notice shall be renewed each year until consent is granted or until the student is no longer eligible for tuition-free educational services.

(3) In addition to the requirements of paragraph (2) of this subdivision, the notice to the parent, or student, where appropriate, shall:

(i) identify all the documents to be forwarded by the committee on special education or multidisciplinary team pursuant to paragraph (2) of this subdivision;

(ii) inform the person notified of the opportunity to review the information to be forwarded and to provide additional relevant information that may be in that person's possession; and

(iii) provide assurances of the confidentiality of personally identifiable data which shall be in accordance with section 200.5(f) of this Part and section 247.4 of this Title, as applicable.

(4) The committee on special education or the multidisciplinary team shall forward additional and updated relevant information to the Commissioner of Mental Health, Commissioner of Mental Retardation and Developmental Disabilities, Commissioner of Social Services or Commissioner of Education, or their designees, upon the request for such information by such commissioner or designee, and upon obtaining appropriate consent.

(5) On or before October 1st of each year, the committee on special education or the multidisciplinary team shall prepare and submit an annual report to the State Education Department, the form and content of which shall be prescribed by the Commissioner of Education in accordance with the provisions of section 4402(1)(b)(5)(e) of the Education Law.

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Sections 207 and 4403 of the Education Law.

Paragraph (10) of subdivision (c) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective February 3, 1989, as follows:

(10) The impartial hearing officer shall render a decision, and mail a copy of the decision to the parents, to the board of education, and to the Office for Education of Children with Handicapping Conditions of the State Education Department, not later than 45 calendar days after the receipt by the board of education of a request for a hearing or after the initiation of such a hearing by the board. All personally identifiable information shall be deleted from the copy forwarded to the Office for Education of Children with Handicapping Conditions. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer and shall set forth the reasons and the factual basis for the determination. The decision shall also include a statement advising the parents and the board of education of the right to obtain a review of such a decision by the commissioner in accordance with subdivision (d) of this section.

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Sections 207 and 4403 of the Education Law

As amended, effective July 22, 1987 and December 9,1987

200.7 Program standards for education programs for pupils with handicapping conditions being educated in private schools and State-operated or State-supported schools.

(a)...

(b)...

(c)...

(d) Appointment of blind, deaf and severely physically handicapped pupils to certain State-operated and State-supported schools pursuant to articles 85, 87 and 88 of the Education Law and chapter 1060 of the Laws of 1974.

(1) Application for State appointment of deaf, blind, severely physically handicapped or severely emotionally disturbed pupils to State-operated or State-supported schools for the blind, deaf, severely physically handicapped or severely emotionally disturbed shall be initiated by parents through application to the commissioner, supported by adequate written evidence of the blind, deaf or severely handicapping condition, or by the committee on special education of the school district responsible for the child. The commissioner or the committee on special education will direct the parents to make arrangements at a State-operated or State-supported school designated by the commissioner for an evaluation. Such school shall evaluate the child's special educational needs and eligibility for its program.

(i) With respect to an application for admission to a State-operated school, or an application of a preschool child to a State-supported school, the school shall notify the parents and commissioner of the results of such evaluation, and recommend appointment if appropriate. In the case of a child not recommended for appointment to a particular school, or in the event of a change in a recommendation concerning the classification, placement or provision of a free appropriate public education to a pupil at a State-operated school or to a preschool child at a State-supported school, the school shall notify the parent. Such notification shall be comparable to that required by section 200.5(a) of this Part, shall include all reasons for lack of acceptance of the child into the program or for the change in the recommendation, and shall include suggestions for more appropriate placement or program. The parent may file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. Such hearing officer shall not be an employee of the department. The procedures relating to the conduct of the hearing and review of the decision of the hearing officer shall be comparable to those set forth in section 200.5 (c)-(d) of this Part.

(ii) With respect to an application for admission of a school-age child to a State-supported school, the school shall report the results of its evaluation to the committee on special education. Upon receipt of such report, the committee on special education shall conduct a meeting in accordance with the provisions of paragraph (3) of subdivision (c) of section 200.4 of this Part, provided that appropriate representatives of the State-supported school shall be given the opportunity to attend and participate in the meeting which may be held at the State-supported school. The committee may recommend that the commissioner appoint the child to the State-supported school, or it may recommend a different placement. If the parents disagree with the recommendation of the committee on special education, they may request that the board of education appoint an impartial hearing officer to review that recommendation, and the hearing officer shall consider, together with

all other relevant information, the evaluation conducted by the State-supported school. If the committee on special education has recommended a placement other than the State-supported school, and the hearing officer finds that such recommendation is inappropriate and that placement in the State-supported school would be appropriate, the hearing officer may order that the board of education recommend to the commissioner that the child be placed in the State-supported school. The decision of the hearing officer may be appealed in accordance with section 4404 of the Education Law.

(2) The approval of the commissioner in granting the State appointment, if appropriate, will be determined upon the following criteria:

(i) Children between the ages of 3 and 21 residing in New York State, who are profoundly deaf, i.e., with a loss in excess of 80 db ISO in the better ear, or who are deaf and, based on a full and individual evaluation, are determined to be functionally profoundly deaf, who are deaf-blind, or who are severely physically handicapped, may receive appointments to the State-operated or State-supported schools and be included for State support for their education.

(ii) Children residing in New York State who are between the ages of 5 and 21 or who are receiving a special instructional program at the preschool level and who are legally blind may receive appointments to the State-operated or State-supported schools and be included for State support for their education.

(iii) Children between the ages of 5 and 21 residing in New York State who are severely emotionally disturbed may receive appointments to the State-operated or State-supported schools and be included for State support for their education.

(iv) Deaf or blind children appointed on a day basis shall be appointed to the school for the deaf or blind nearest their place of residence; provided that, with the consent of the child's parent, a blind child may be appointed to the Lavelle School for the Blind in the city of New York or the New York Institute for Education of the Blind in the city of New York without regard to which such State-supported school is nearer to the child's place of residence. Children may be appointed to a school for the deaf or blind on a residential basis when daily transportation between the child's place of residence and such school is not feasible, or when it is established to the satisfaction of the commissioner that such placement is necessary to meet the individual educational needs of the pupil. Appointments for severely physically handicapped children to attend the Human Resources School shall be on a day basis only.

(3) If the commissioner declines to make a State appointment of a child who has been recommended for appointment by a State-operated or State-supported school, or if he seeks to change a child's classification or placement against the recommendation of the State-operated or State-supported school which such child attends, the parent may file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. Such a hearing officer shall not be an employee of the department. The procedures relating to notice and review of a refusal of State appointment or of a change of classification or placement by the commissioner shall be comparable to those set forth in section 200.5 (a)-(c) of this Part, and shall be provided by the Education Department. Review of the determination of the hearing officer shall be available by means of a proceeding pursuant to article 78 of the Civil Practice Law and Rules or 20 USC 1415, and may be instituted by any party to the hearing.

(4) State-appointed pupils shall be eligible for transfer between State-operated and/or State-supported schools upon the approval of the commissioner. State-appointed pupils being considered for transfer shall remain in the school they currently attend until an alternate school placement is finalized. Such transfers shall be subject to the applicable placement and review procedures set forth in paragraph (1) of this subdivision.

(5) State-operated or State-supported schools may apply to the commissioner for the termination of the appointment of a pupil who had been admitted to the school pursuant to subparagraph (1)(i) of this subdivision. An application for this purpose shall set forth the basis for such action and shall be made only after compliance with the applicable notice and review procedures set forth in paragraph (1) of this subdivision. No placement of a school-age child in a State-supported school may be terminated prior to review by the committee on special education. No appointment to a State-operated or State-supported school shall be terminated until the pupil can be transferred to a more appropriate program without interruption of the continuity of such pupil's education program.

(6)...

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Sections 207, 4002(2), 4401(2), 4403(3) of the Education Law

1. Section 200.7 of the Regulations of the Commissioner of Education is amended, effective January 8, 1988, by the addition of a new subdivision (e), to read as follows:

(e) Notice of closing, transfer of ownership or voluntary termination of approval by approved private schools. The owner or operator of an approved private residential or non-residential school for pupils with handicapping conditions that receives public funds pursuant to articles 81 and/or 89 of the Education Law, who intends to cease the operation of such school or chooses to transfer ownership, possession or operation of the premises and facilities of such school or to voluntarily terminate its status as an approved school, shall submit to the commissioner written notice of such intention not less that 90 days prior to the intended effective date of such action. Such notice shall set forth a detailed plan which makes provision for the safe and orderly transfer of each student with a handicapping condition who was publicly placed in such approved private school. The owner or operator of any such approved private school shall not cease to provide services to any student with a handicapping condition until the required notice and plan have been received, reviewed and approved by the commissioner, and a transfer of such student has been arranged in accordance with the approved plan.

2. Subdivision (e) of section 200.9 of the Regulations of the Commissioner of Education is amended, effective January 8, 1988 by the addition of a new paragraph (12), to read as follows:

(12) Reimbursement procedures during close-down period. The owner or operator of an approved private residential or non-residential school who has elected to cease operation, transfer ownership or voluntarily terminate its status as an approved school shall comply with the requirements of section 200.7(e) of this Part. Financial procedures and allowable costs for the close-down period shall be determined by the commissioner with the approval of the Director of the Budget. For purposes of this paragraph, the close-down period means the period of time beginning with the date of the commissioner's receipt of notice pursuant to section 200.7(c) of this Part and ending on the date of the school's cessation of operation, transfer of ownership or voluntary termination of its status as an approved school.

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Sections 207, 4402, 4403, 4406, of the Education Law,
Section 236 of the Family Court Act, and Chapter 53 of the Laws of 1987

Paragraph (1) of subdivision (a) of section 200.8 of the Regulations of the Commissioner of Education is amended, effective September 23, 1987, as follows:

(1) for services provided during the months of July and August through August 1987, such pupil is a child with a handicapping condition, as defined by section 4401 of the Education Law, and is not eligible for educational services pursuant to article 73, 85, 87, 88 or 89 of the Education Law; or

(2) ...

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Sections 207, 4403, 4405 and 4408 of the Education Law, and Chapter 683 of the Laws of 1986.

Section 200.12 of the Regulations of the Commissioner of Education is amended, effective August 27, 1987, to read to follows:

200.12 State assistance for transportation of pupils with handicapping conditions pursuant to Education Law section 4405. An expenditure by a school district to provide suitable transportation during the period from July 1st through June 30th for a pupil with a handicapping condition to and from a private residential school located within or outside of the State, or to and from residential programs in schools enumerated in article 85, 87, 88 or 89 of the Education Law, shall be aidable provided that:

(a) the pupil was placed in such school in accordance with the provisions of article 85, 87, 88 or 89 of the Education Law; and the expenditure is for transportation of the pupil from the pupil's home to the school at the commencement of the school year, from the school to the pupil's home at the conclusion of the school year, and no more than three additional trips to and from school for pupils enrolled in a ten-month program, or four additional trips to and from school for students enrolled in a twelve-month program, except as additional trips may need to be provided for the periods during which residential care is not provided to the pupils attending such school; and

(b) ...

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